



U.S. Department
of Transportation
**Federal Transit
Administration**

REGION IX
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RM DRAFT 3/8/10

Mr. Kenneth T. Hamayasu
Chief, Rapid Transit Division
City and County of Honolulu
650 South King Street, 3rd Floor
Honolulu, Hawaii 96813

Dear Mr. Hamayasu:

Thank you for your letter dated February 8, 2010, regarding the design-build (DB) contract between the City and County of Honolulu (“the City”) and Kiewit Pacific Company (Kiewit). The letter provides some explanation on the 35 work activities that the City authorized under the initial notice-to-proceed (NTP #1) under this contract and notifies the Federal Transit Administration (FTA) of the City’s intention to proceed with a second notice-to-proceed (NTP #1A) for three additional work activities. Activities authorized by these NTPs will proceed prior to issuance of a Record of Decision that will conclude the National Environmental Policy Act (NEPA) process for the proposed project. Your letter states the City’s intention to issue NTP #1A to Kiewit by February 22, 2010. We understand that has not happened.

Based on the summary information provided by the City regarding NTP#1A, two activities to develop geotechnical data appear to be consistent with the applicable FTA guidance on DB contracts initiated prior to completion of NEPA (Federal Register, Volume 72, No. 12, page 2583; January 19, 2007). The guidance specifically defines “geotechnical investigations” as an allowable activity. The third category of activities described as “all initial design activities preliminary to various interim design submittals” was not described in sufficient detail to demonstrate they would remain within the bounds set by the applicable Federal Register (FR) notice.

Finally, FTA is aware the Kiewit DB contract includes target dates for post-NEPA activities. FTA is also aware the City is preparing and soliciting proposals for other activities such as the maintenance facility construction and vehicles procurement. At the time the DB contract was awarded the City anticipated completion of the NEPA process by the end of calendar year 2009, and now the anticipated schedule for completion of the NEPA process is uncertain due to a number of outstanding issues. One of the outstanding issues involves FTA’s sister modal administration, the Federal Aviation Administration (FAA). FTA would be happy to assist the City in facilitating a meeting with the FAA to address potential airport mitigation measures so that we can revise the NEPA schedule. With that in mind, the City must continue to ensure that work under the Kiewit contract is managed in a way that responds to these schedule realities, to NEPA requirements, to PE requirements and to the applicable FR notice on DB contracts, thereby avoiding activities that would jeopardize federal funding for the project.

If you have any questions about this matter, please contact our Regional Counsel, Renee Marler. Ms. Marler can be reached at 415--744-2736.

Sincerely,

Leslie T. Rogers
Regional Administrator